

VIII. PRIVATE SCHOOLS

This section applies to children with disabilities who attend private or parochial schools or who are home schooled.

1. **CHILDREN PLACED IN APPROVED PRIVATE AGENCIES BY PUBLIC AGENCIES**

Responsibility of the SEA (34 CFR 300.401)

The Department of Elementary and Secondary Education ensures that when a child with a disability is placed in or referred to an approved private agency by the state or local education agencies, the child is provided special education and related services in conformity with an individualized education program and at no cost to parents. Each child must be provided an education that meets the standards that apply to education provided by the SEA and LEAs and each child has all the rights of a child with a disability who is served by the public agency.

Implementation by the SEA (34 CFR 300.402)

The Department of Elementary and Secondary Education will approve private agencies in accordance with standards developed for public agencies through procedures, such as a review of policies and procedures, written reports, parent questionnaires, and on-site visits.

All private agencies approved by the Department of Elementary and Secondary Education receive a copy of State Standards and Regulations for special education.

The Department of Elementary and Secondary Education will provide representatives from approved agencies the opportunity to participate in the development and revision of State standards that apply to them.

Any private educational agency which desires to contract with a local board of education or with the State Board of Education to provide special education and related services for students with disabilities shall make application to the state board of education for review and approval by staff of the Department of Elementary and Secondary Education as outlined in Regulation VI.1.

Responsibility of the LEA

Local school districts have the authority to contract with only those private agencies that have been approved by the State Board of Education.

2. **CHILDREN ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS WHEN FAPE IS AT ISSUE**

- A. An LEA is not required to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made FAPE available to the child and the parents elected to place the child in a private school or facility. However, the public agency shall include that child in the population whose needs are addressed consistent with 34 CFR 300.450-300.462 that are outlined in this section.

- B. Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures.

If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private preschool, elementary, or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made FAPE available to the child in a timely manner prior to that enrollment and that the private placement is appropriate. A parental placement may be found to be appropriate by a hearing officer or a court even if it does not meet the State standards that apply to education provided by the SEA and LEAs.

The cost of reimbursement described in the above paragraph may be reduced or denied if at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP team that they were rejecting the placement proposed by the public agency to provide FAPE to their child, including stating their concerns and their intent to enroll their child in a private school at public expense, or at least ten (10) business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information previously described in this section; or if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in 34 CFR 300.503(a)(1), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for the evaluation, or upon a judicial finding of unreasonableness with respect to actions taken by the parents.

- C. Notwithstanding the notice requirement, the cost of reimbursement may not be reduced or denied for failure to provide the notice if:
- 1) the parent is illiterate and cannot write in English;
 - 2) maintaining the child in the public agency placement would likely result in physical or serious emotional harm to the child;
 - 3) the school prevented the parent from providing the notice; or,
 - 4) the parents had not received notice.

3. CHILDREN WITH DISABILITIES ENROLLED BY THEIR PARENTS IN PRIVATE SCHOOLS

Private school children with disabilities means children with disabilities enrolled by their parents.

Child Find for Private School Children with Disabilities (34 CFR 300.451)

Each LEA shall locate, identify, and evaluate all private school children with disabilities, including religious-school children residing in the jurisdiction of the LEA. The activities undertaken to carry out this responsibility for private school

children with disabilities must be comparable to activities undertaken for children with disabilities in public schools.

Each LEA shall consult with appropriate representatives of private school children with disabilities on how to carry out child find activities.

4. LEA REQUIREMENTS TO PROVIDE SERVICES TO PRIVATE SCHOOL STUDENTS

To the extent consistent with their number and location in each local district, provision must be made for the participation of private school children with disabilities in the program assisted or carried out under Part B IDEA by providing them with special education and related services.

Each public agency shall ensure that a services plan is developed and implemented for each private school child with a disability who has been designated to receive special education and related services.

NOTE: While IDEA does not provide an individual entitlement to such private school students and IDEA compliance requires only that services provided represent a proportionate share as explained below under “Expenditures,” school districts need to consider the extent of services required under Missouri law.

Expenditures (34 CFR 300.453)

Each LEA must spend on providing special education and related services to private school children ages 3 to 21 with disabilities an amount that is the same proportion of the LEA's total subgrant under Section 611(g) of IDEA (K-12 entitlement) as the number of private school children with disabilities aged 3 through 21 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 21. For children aged 3 through 5, an amount that is the same proportion of the LEA's total subgrant under Section 619(g) (Preschool Entitlement) of the IDEA as the number of private school children with disabilities aged 3 through 5 residing in its jurisdiction is to the total number of children with disabilities in its jurisdiction aged 3 through 5.

Each LEA shall consult with representatives of private school children in deciding how to conduct the annual count of the number of private school children with disabilities; and ensure that the count is conducted on December 1. The child count must be used to determine the amount that the LEA must spend on providing special education and related services to private school children with disabilities in the next subsequent fiscal year.

Expenditures for child find activities may not be considered in determining whether the LEA has met its requirements for expenditures.

State and local educational agencies are not prohibited from providing services to private school children with disabilities in excess of those required by this part, consistent with State law or local policy.

Services Determined (34 CFR 300.454)

No private school child with a disability has an individual right to receive some or all of the special education and related services that the child would receive if enrolled in a public school.

A. General

Each LEA shall consult, in a timely and meaningful way, with appropriate representatives of private school children with disabilities in light of the funding identified to serve private school children with disabilities, the number of private school children with disabilities, the needs of private school children with disabilities, and their location to decide:

- 1) Which children will receive services;
- 2) What services will be provided;
- 3) How and where the services will be provided; and,
- 4) How the services provided will be evaluated.

B. Genuine opportunity

Each LEA shall give appropriate representatives of private school children with disabilities a genuine opportunity to express their views regarding each matter that is subject to the consultation requirements in this section.

C. Timing

The consultation with private school representatives must occur before the LEA makes any decision that affects the opportunities of private school children with disabilities to participate in services.

D. Decisions

The LEA shall make the final decisions with respect to the services to be provided to eligible private school children.

If a child with a disability is enrolled in a religious or other private school and will receive special education or related services from an LEA, the LEA shall initiate and conduct meetings to develop, review, and revise a services plan for the child, and ensure that a representative of the religious or other private school attends each meeting. If the representative cannot attend, the LEA shall use other methods to ensure participation by the private school, including individual or conference telephone calls.

Services Provided (34 CFR 300.455)

The services provided to private school children with disabilities must be provided by personnel meeting the same standards as personnel providing services in the public schools. Private school children with disabilities may receive a different amount of services than children with disabilities in public schools. No private school child with a disability is entitled under IDEA to any service or to any amount of a service the child would receive if enrolled in a public school.

Each private school child with a disability who has been designated to receive services must have a services plan that describes the specific special education and related services that the LEA will provide to the child in light of the services that have been determined to be accessed by the private school child with disabilities. The services plan

must, to the extent appropriate, meet the requirements specified for an IEP with respect to the services provided, and be developed, reviewed, and revised consistent with requirements for IEPs.

Location of Services; Transportation (34 CFR 300.456)

Missouri case law and the Missouri Constitution prohibit the provision of services, equipment and personnel on-site at a child's private school.

If necessary for the child to benefit from or participate in the services provided under this part, a private school child with a disability must be provided transportation from the child's school or the child's home to a site other than the private school; and from the service site to the private school, or to the child's home, depending on the timing of the services. LEAs are not required to provide transportation from the child's home to the private school. The cost of the transportation may be included in calculating whether the LEA has met expenditure requirement.

Due Process Hearing Rights

There is no right to a due process hearing under the Procedural Safeguards in the case of a student enrolled by their parents in a private school student unless the issue pertains to child find activities, including evaluations.

State Child Complaints

Complaints that an SEA or LEA has failed to meet the requirements of 34 CFR 300.451-300.462 may be filed under the child complaint process in Regulation VI.2.

An LEA may not use funds available under Section 611 or 619 IDEA:

- A. for classes that are organized separately on the basis of school enrollment or religion of the students if the classes are at the same site, and the classes include students enrolled in public schools and students enrolled in private schools (34 CFR 300.458); and,
- B. to finance the existing level of instruction in the private school, or to otherwise benefit the private school (34 CFR 300.459).

Use of Funds

An LEA may use funds available under Sections 611 and 619 of IDEA

- A. to make public school personnel available to the extent necessary to provide the special education and related services for private school children pursuant to this section. Public employees and services will be made available to students in the private school before school, after school, during school, on Saturdays, or during the summer on the grounds of the public school or a neutral site, at the discretion of the school district (34 CFR 300.460).

NOTE: The Missouri Constitution at Article I, Section 7, and Article IX, Section 8, prohibits the placement of public personnel, services, equipment and supplies or the provision of services in private/parochial schools. See SSD v Wheeler, 408 S.W. 2d. 60 (MO 1966), McVey v Hawkins, 258 S.W. 2d. 927 (Mo. banc 1953), Mallory vs. Barrera, 544 S.W. 2d. 556, and Brusca vs. State of Missouri ex rel. State Board of Education, 332 F. Supp. 275, affirmed 405 US 1050.

Use of Private School Personnel (34 CFR 300.461)

- A. The local school district may use funds to employ personnel employed at the private school to provide services if:
- 1) the private school employee performs the services outside of his or her regular hours of private school duties;
 - 2) the services are provided on public school grounds or a neutral site; and,
 - 3) the employee performs the services under public supervision and control.

Equipment/Supplies/Construction for the Benefit of Private School Children with Disabilities (34 CFR 300.462)

A public agency must keep title to and exercise continuing administrative control of all property, equipment, and supplies that the public agency acquires with funds under Section 611 or 619 of IDEA for the benefit of private school children with disabilities.

The local school district shall spend no funds for repairs, construction, or minor remodeling of private school facilities.

LISTED BELOW ARE THE STATUTES OF MISSOURI WHICH PROVIDE A LEGAL BASIS AND SOURCE FOR MISSOURI'S POLICY RELATING TO PRIVATE SCHOOLS:

Article I, Section 7
Article IX, Section 8
Section 162.996